CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	V	Force	V	Discourt.	☑ U.S.
Yonce Hitt		Squad #14	202104382	☑	Abuse		O.L.	☐ Injury
Incident Date(s)		Location of Incident:			18 M	lo. S	OL	Precinct:
Saturday, 07/24/2021 1:15 AM, Thursday, 03/17/2022 9:05 AM		Atlantic Avenue and Rockaway Avenue; Civilian Complaint Review Board		1/24/2023		73		
Date/Time CV Reported		CV Reported At:	How CV Reported:	:	Date/Time	Rece	eived at CC	RB
Sat, 07/24/2021 4:27 PM		CCRB	On-line website		Sat, 07/24	/2021	4:27 PM	
Complainant/Victim	Type	Home Addre	ess					
Witness(es)		Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. LT Erek Powers	00000	944907	073 PCT					
Witness Officer(s)	Shield N	o Tax No	Cmd Name					
1. POM Stephen Rice	02527	964238	073 PCT					
2. POM Christophe Kalinowski	22920	962515	073 PCT					
Officer(s)	Allegatio	on			Inve	estiga	ator Recon	nmendation
A.LT Erek Powers	Avenue a	n July 24th, 2021, at the and Rockaway Avenue is vers used physical force	n Brooklyn, Lieuten					
B.LT Erek Powers	Abuse: On July 24th, 2021, at the intersection of Atlantic Avenue and Rockaway Avenue in Brooklyn, Lieutenant Erek Powers threatened with the use of force.							
C.LT Erek Powers	Discourtesy: On July 24th, 2021, at the intersection of Atlantic Avenue and Rockaway Avenue in Brooklyn, Lieutenant Erek Powers spoke discourteously to \$87(2)(b)							
D.LT Erek Powers	Atlantic .	esy: On July 24th, 2021, Avenue and Rockaway A nt Erek Powers spoke di	Avenue in Brooklyn	,				
E.LT Erek Powers	Avenue a	on July 24th, 2021, at the and Rockaway Avenue is vers threatened [8](2)(6)		ant				
F.LT Erek Powers	Complain	ul Stmt.: On March 17th nt Review Board, Lieute ling official statement to	enant Erek Powers p		ded			
G.LT Erek Powers	Complain	ul Stmt.: On March 17th nt Review Board, Lieute ling official statement to	enant Erek Powers p		ded			

Case Summary

On July 24-, 2021, \$87(2)(b) filed the following complaint with the CCRB via the
online website.
On July 24, 2021, at approximately 1:15 a.m., second drove alone in his 2007
Nissan Ultima, license plate 887(2)(6) on Rockaway Avenue near the intersection of Atlantic
Avenue, in Brooklyn. Lieutenant Erek Powers, Police Officer Stephen Rice, and Police Officer Christopher Kelingwelt, all of the 72. Precipate stephen Rice and Police Officer
Christopher Kalinowski, all of the 73 ^a Precinct, stopped vehicle. Lieutenant Powers asked 587000 to exit his vehicle and PO Rice and PO Kalinowski escorted 587000 to
the rear humper of his vehicle. At the rear of 1870/10 vehicle. Lieutenant Dowers allegedly
the rear bumper of his vehicle. At the rear of \$87(2)(0) vehicle, Lieutenant Powers allegedly pushed \$87(2)(0) (Allegation A: Force, \$87(2)(0) Lieutenant Powers threatened \$97(2)(0)
with physical force and allegedly said something to the effect of, "You know you're
really skinny, right? You know I would hurt you? You wouldn't even survive" (Allegation B:
Abuse of Authority, \$57(2)@ Allegation C: Discourtesy, \$57(2)@ \$57(2)@
alleged that Lieutenant Powers then stated, "You're out here at 2:00 in the morning working Uber
eats, you look like a bum to me" (Allegation D: Discourtesy, \$87(2)(2) PO Rice issued
a summons for VTL reckless driving (BR 01), at which point Lieutenant Powers, PO
Rice, and PO Kalinowski returned to their police vehicle.
As Lieutenant Powers, PO Rice, and PO Kalinowski pulled away, Lieutenant Powers
allegedly rolled down the passenger side window and yelled to \$87(2)(6) to meet up at Sutter
Avenue after his shift had concluded (Allegation E: Abuse of Authority, \$87(2)(2)
left the location without additional incident.
On March 17, 2022, at approximately 9:05 a.m., at 100 Church Street in Manhattan,
Lieutenant Powers made misleading statements to the CCRB (Allegations F-G: Untruthful
Statement, § 87(2)(2)
[\$ 87(2)
(b)] [§§
Dody were comerc feetage from DO Dies DO Valinowski, and Lieutenant Dowers was
Body-worn camera footage from PO Rice, PO Kalinowski, and Lieutenant Powers was received for this case, the relevant aspects of the footage are addressed in further detail below.
received for this case, the relevant aspects of the footage are addressed in further detail below.
Findings and Recommendations
Allegation (A) Force: On July 24th, 2021, at the intersection of Atlantic Avenue and
Rockaway Avenue in Brooklyn, Lieutenant Erek Powers used physical force against
The investigation established the following facts:
On July 24, 2021, at approximately 1:15 a.m., SST(2)(6) drove across the double
yellow line on Rockaway Avenue and briefly into the opposite lane of traffic. PO Rice, PO
Kalinowski, and Lieutenant Powers stopped near the intersection of Rockaway Avenue and Atlantic Avenue. PO Rice and Lieutenant Powers spoke briefly to
Avenue and Atlantic Avenue. PO Rice and Lieutenant Powers spoke briefly to see from outside the vehicle with PO Rice at the driver's side window and Lieutenant Powers at the
passenger seat window. PO Rice and Lieutenant Powers instructed [887(2)(6)] to exit his vehicle
and stand at the rear bumper, where the rest of their interaction took place. PO Rice issued
a summons for VTL reckless driving.
(BR 02) testified that while he was standing at the rear bumper of his
vehicle, Lieutenant Powers pushed \$87(2)(b) with one hand at \$87(2)(b) waist area.
further described that the push did not move him much, but that Lieutenant Powers
pushed him hard.
Lieutenant Powers testified (BR 03) that while at the rear of \$87(2)(6) vehicle, he
instructed \$87(2)(b) to move out of the way of moving traffic and \$87(2)(b) did not
comply. Lieutenant Powers placed his hand on \$87(2)(6) waist to guide him away from

CCRB Case # 202104382

moving traffic only after 3000 did not comply with his multiple requests to step away from moving traffic. At 16:00 on the player timestamp of PO Rice's body-worn camera footage (BR 04), Lieutenant Powers and 88/(2)(6) are captured standing together at the back of section vehicle, approximately one foot apart from each other. At the 16:11 timestamp, Lieutenant Powers can be heard saying, "Do me a favor, stand over here." At the 16:13 minute mark of PO Rice's body-worn camera, Lieutenant Powers is seen holding the bottom of \$87(2)(6) briefly raised above his head. Lieutenant Powers' right hand is shown grabbing \$ 87(2)(b) right tricep with Lieutenant Powers' right thumb on one side of the tricep, and his right index and middle finger on the other side of the tricep (<<16:11-16:17>>). At the 16:15 timestamp, Lieutenant Powers' left arm is seen extending outward at \$87(2)(6) waist area, and § 87(2)(6) takes a couple of steps to his left so that his back is parallel with the rear bumper of his vehicle. The footage does not capture Lieutenant Powers forcefully pushing as alleged. In Lieutenant Powers' body-worn camera footage (BR 05), he is captured saying to "Do me a favor, stand over here," (<<16:04-16:10>>) at which point, \$87(2)(0) captured taking two steps to his left. Lieutenant Powers' hands are not captured in the body-worn camera footage because of the proximity between him and § 87(2)(6) Body-worn camera footage captures some traffic conditions, showing a few cars driving past. There are only a few cars that come into frame during the entire incident, all of which drive around the stopped vehicles. Lieutenant Powers' testimony that he only made physical contact with \$87(2)(6) his verbal request for \$87(2)(b) to move was ignored is consistent with his own and PO Rice's body worn camera footage. Furthermore, PO Rice's body-worn camera footage captures Lieutenant Powers briefly touch second to guide him toward the bumper of his car, which is consistent of Lieutenant Powers' description of the encounter. § 87(2)(g) Allegation (B) Abuse of Authority: On July 24th, 2021, at the intersection of Atlantic Avenue and Rockaway Avenue in Brooklyn, Lieutenant Erek Powers threatened with the use of force. Allegation (C) Discourtesy: On July 24th, 2021, at the intersection of Atlantic Avenue and Rockaway Avenue in Brooklyn, Lieutenant Erek Powers spoke discourteously to ১৪৫০টো As discussed above, \$87(2)(6) and Lieutenant Powers were standing one foot apart from each other for approximately 15 minutes at the back of \$87(2)(6) vehicle. During that and Lieutenant Powers engaged in a verbal dispute. testified that while he was standing at the back of his vehicle with Lieutenant Powers, Lieutenant Powers said something to the effect of, "You know you're really skinny right? You know I would hurt you? You wouldn't even survive." Lieutenant Powers' body-worn camera footage (BR05) captures the full conversation Lieutenant Powers and § 87(2)(6) between himself and \$87(2)(6) are captured engaging in an antagonistic back-and-forth. At 14:47, second says he "knows [Lieutenant Powers'] type." Lieutenant Powers tells \$\$7(2)(6) that he does not know him. him and says he does not know him but knows his type. They repeat these sentiments multiple times, Lieutenant Powers saying \$87(2)(b) doesn't know him and \$87(2)(b) knows Lieutenant Powers' type, until \$87(2)(6) says that he is "a man" and that Lieutenant Powers is "a sucker." At that point, Lieutenant Powers is captured saying "You might want to get your weight up before you start running your mouth." [87(2)6) responds, "What does my

CCRB CTS – Confidential Page 2

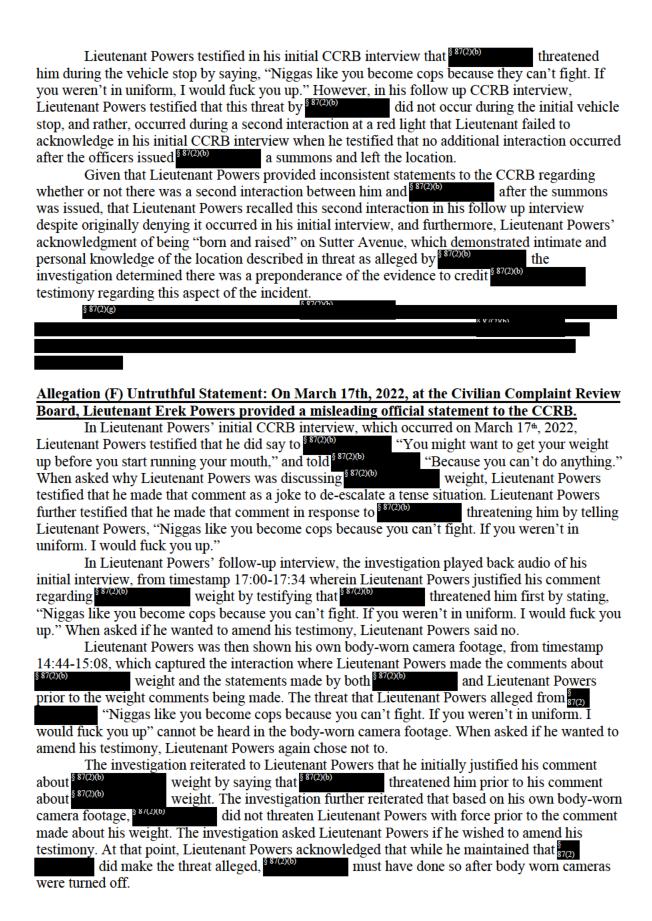
CCRB Case # 202104382

weight have to do with anything?" Lieutenant Powers says, "Because you can't do anything" (<<15:04-15:29>>). The footage does not capture Lieutenant Powers stating, "You know you're really skinny right? You know I would hurt you? You wouldn't even survive" as alleged by savenor However, the investigation determined that \$8700 was alleging the comment Lieutenant Powers made about § 87(2)(b) "running [his] mouth" as shown in the aforementioned BWC, as this included a comment about § 87(2)(6) weight. In his interview, Lieutenant Powers acknowledged that he told \$87(2)(6) want to get your weight up before you start running your mouth," and "Because you can't do anything," when § 87(2)(b) asked why Lieutenant Powers was discussing his weight. Lieutenant Powers testified that the statement was a joke he made in an attempt to de-escalate the situation. Lieutenant Powers further testified that he was threatened by \$87(2)(b) Lieutenant Powers something to the effect of, "Niggas like you become cops because you can't fight. If you weren't in uniform, I would fuck you up." According to NYPD Patrol Guide Procedure 221-01, when appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. Regarding the use of force, force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody (BR 06). NYPD Patrol Guide Procedure 200-02 states its mission is protecting lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect (BR 07). DAO-DCT Case#2015-15012, Police Department v. Pichardo ruled that officers were not allowed to use discourteous statements which served no legitimate purpose but to belittle a civilian (BR 08). alleged that Lieutenant Powers threatened him by saying, "You know you're really skinny right? You know I would hurt you? You wouldn't even survive" which is corroborated by BWC footage in which Lieutenant Powers told (1970) "You might want to get your weight up before you start running your mouth" and "Because you can't do anything." weight and fighting, the investigation Given that both of these comments discuss §87(2)(6) determined that these comments amounted to a threat of force as alleged by \$87(2)(6) Furthermore, Lieutenant Powers' justification for making the comments as shown on BWC was that \$37000 threatened to "fuck him up." This further contextualized Lieutenant Power's statements as a threat to use force given Lieutenant Powers' suggestion for \$87(2)(6) "get his weight up" before he started "running his mouth" because strong anything" as a description of how this physical altercation between Lieutenant Powers and would go. § 87(2)(g) Additionally, body-worn camera footage could not corroborate Lieutenant Powers' threatened him during this incident, \$ 87(2)(g) assertion that \$ 87(2)(6) Allegation (D) Discourtesy: On July 24th, 2021, at the intersection of Atlantic Avenue and Rockaway Avenue in Brooklyn, Lieutenant Erek Powers spoke discourteously to

testified that during the stop, while he stood with Lieutenant Powers at the rear of his vehicle, Lieutenant Powers made discourteous statements regarding \$87(2)(b) and financial status. \$87(2)(b) testified that Lieutenant Powers said something to the effect of, "You're out here at 2:00 in the morning working Uber eats, you look like you're a bum to me." Body-worn camera footage from PO Kalinowski, PO Rice, and Lieutenant Powers did not capture Lieutenant Powers making this statement or any other comments regarding \$87(2)(b) employment or financial status. In his interview, Lieutenant Powers denied calling \$87(2)(b) Based on comprehensive body-worn camera footage, the investigation determined that Lieutenant Powers did not make any comments to \$87(2)(6) wherein Lieutenant Powers referred to him as a "bum," or spoke discourteously to \$87(2)(b) regarding the nature of his employment. § 87(2)(g) Allegation (E) Abuse of Authority: On July 24th, 2021, at the intersection of Atlantic Avenue and Rockaway Avenue in Brooklyn, Lieutenant Erek Powers threatened § 87(2)(b) with the use of force. testified that following the conclusion of the vehicle stop, he returned to his vehicle and sat in the driver's seat of his car. PO Rice, PO Kalinowski, and Lieutenant Powers returned to their vehicle, pulled out from behind \$87(2)(b) vehicle, and pulled up next to \$ vehicle. Lieutenant Powers rolled down the front passenger window and yelled to be something to the effect of, "You know I will hurt you, right?" \$87(2)(b) "You really don't want that because if you really wanted that you would take off the gun and the badge or whatever and just square up and fight." Lieutenant Powers replied, "I get off at 2:00am. Meet me at Sutter." wife, § 87(2)(b) was on the phone with § 87(2)(b) latter half of the stop. § 87(2)(b) testified that § 87(2)(b) called her after being pulled over and that she could hear the entirety of the interaction through his Bluetooth headphones. [87(2)] testified she heard through the phone something to the effect of, "Take my phone number down, we're going to meet up and fight, I get off at 2:30." (BR 09). Lieutenant Powers testified that after issuing § 87(2)(b) a summons, the officers left without further interaction. Lieutenant Powers denied making any comments to \$87(2)(6) about meeting up after work to fight. However, in a follow-up interview with Lieutenant Powers (BR 11), Lieutenant Powers amended his aforementioned testimony and acknowledged that there was an interaction between him and \$87(2)(b) after the stop was conducted. Lieutenant Powers testified that after the initial vehicle stop ended, § 87(2)(b) and the officers were stopped next to each other at a red light. Lieutenant Powers, who was in the passenger seat of the police vehicle, engaged in a verbal exchange with \$57(2)(b) who was operating his own vehicle idling at the same stop light in the adjacent lane. Lieutenant Powers further testified that during that interaction, said something to effect of, "Niggas like you become cops because they can't fight. If you weren't in uniform, I would fuck you up." Lieutenant Powers maintained that he did not make any comments about meeting up after work to fight and denied saying "I get off at 2:00 am. Meet me at Sutter." Lieutenant Powers was asked if he knew was "Sutter" was, Lieutenant Powers testified that it was a street in Brooklyn that he was born and raised on. PO Rice (BR 10) testified that he could not recall hearing Lieutenant Powers, or any other officer, make a comment to §87(2)(b) about meeting up after work to fight. Body-worn camera footage received by the investigation did not capture this aspect of the incident, as by this point, the officers had concluded the initial vehicle stop, returned to their vehicles, and disengaged their cameras in accordance with the NYPD Patrol Guide.

to ensure the safety of a member of service or third person, otherwise protect life, or when it is reasonable to place someone in custody or prevent an individual from escaping custody.

According to Patrol Guide Procedure 221-01 force is only to be used when it is reasonable



CCRB Case # 202104382

According to NYPD Administrative Guide Procedure 304-10 (BR 12), officers are prohibited from making a misleading official statement, which is defined as a statement intended to misdirect the fact finder or materially alter the narrative by omitting material facts, making repeated claims of "I don't recall" when a reasonable person would recall, and altering a member's prior statement or account when a member a member of service is confronted with independent evidence indicating that an event did not occur as initially described. The question of when \$87(2)(b) made the alleged threat of force is clearly material to the investigation, as it pertains to the justification for the threat of force made by Lieutenant Powers when he told \$87(2)(b) "You might want to get your weight up before you start running your mouth," and "Because you can't do anything." Given that Lieutenant Powers was given the opportunity to review his original testimony and his own contradicting body-worn camera footage during the follow-up interview, each with an opportunity to amend his testimony, \$87(2)(g) § 87(2)(g) Allegation (G) Untruthful Statement: On March 17th, 2022, at the Civilian Complaint Review Board, Lieutenant Erek Powers provided a misleading official statement to the CCRB. In Lieutenant Powers' initial interview, Lieutenant Powers denied telling \$87(2)(6) "You know I'll hurt you, right" and "I get off at 2:00 am. Meet me at Sutter." Lieutenant Powers denied having any interaction with \$87(2)(b) after the initial stop and issuance of summons. In his follow up interview, Lieutenant Powers amended his initial testimony and described an interaction that occurred after the stop had concluded, where Lieutenant Powers and were both inside their vehicles, idling next to each other at a red light. In his amended testimony, Lieutenant Powers testified that while he and \$87(2)(6) were waiting at the light, said to Lieutenant Powers, "Niggas like you become cops because you can't fight. If you weren't in uniform, I'd fuck you up." Lieutenant Powers denied telling \$87(2)(b) "You know I'll hurt you right," and, "I get off at 2:00am. Meet me at Sutter" and aside from alleged statement, Lieutenant Powers could not recall any other words exchanged during this interaction. According to the NYPD Administrative Guide Procedure 304-10, officers are prohibited from making a misleading official statement, which is defined as a statement intended to misdirect the fact finder or materially alter the narrative by omitting material facts, making repeated claims of "I don't recall" when a reasonable person would recall, and altering a member's prior statement or account when a member a member of service is confronted with independent evidence indicating that an event did not occur as initially described. Lieutenant Powers provided inconsistent testimony to the CCRB regarding the acknowledgement of a secondary interaction that occurred with \$87(2)(b) The testimony was material in that it is directly related to \$87(2)(b) allegation that Lieutenant Powers threatened him with force by insinuating his willingness to physically fight him after his tour ended, and Lieutenant Powers' testimony regarding whether the interaction occurred is essential to the investigation of this allegation. § 87(2)(g) Given that Lieutenant Powers initially testified that there was no interaction following the stop, but then amended his testimony and acknowledged specific details of the interaction following the stop, including the positioning of both parties throughout and comments made by \$87(2)(b) during that exchange,

Civilian and Officer CCRB Histories

- This is the first complaint to which \$87(2)(b) has been a party.
- Lieutenant Powers has been a member of service for 14 years and has been a subject in 18 complaints and 45 allegations, of which five were substantiated.
 - 201407556 involved substantiated allegations of an entry and search of premises against Lieutenant Powers. The Board recommended Charges and the NYPD imposed no discipline.
 - 201606619 involved substantiated allegations of an entry and search of premises and a retaliatory summons against Lieutenant Powers. The Board recommended Command Discipline A and the NYPD imposed Command Discipline A.
 - 201608616 involved substantiated allegations of threat of force against Lieutenant Powers. No disciplinary action was taken because it exceeded the statute of limitations
 - 201710677 involved substantiated allegations of discourtesy (word) against Lieutenant Powers. The Board recommended Command Level Instruction and the NYPD imposed Instruction.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of April 4*, 2022, the New York City Office of the Comptroller does not have any record of a Notice of Claim being filed in regard to this incident (BR 13).

● [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]		
Squad:14_			
Investigator: _	Yonce Hitt Signature	Inv. Yonce Hitt Print Title & Name	9/6/2022 Date
Squad Leader: <u>-</u>	Cassandra Fenkel Signature	IM Cassandra Fenkel Print Title & Name	09/08/2022 Date

CCRB Case # 202104382

CCRB CTS – Confidential

Reviewer:			
	Signature	Print Title & Name	Date